



December 20, 2013

XXX
XXX
XXX

Mr. Charles Baugh
Director of Early Intervention Services
Baltimore City Infants and Toddlers Program
3002 Druid Park Drive
Baltimore, Maryland 21215

Dr. Kim Hoffmann
Executive Director of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #14-032

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced child. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On October 22, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced child. In that correspondence, the complainant alleged that the Baltimore City Infants and Toddlers Program (BCITP) and the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the child.

The MSDE investigated the allegations listed below:

1. The BCITP did not conduct a transition planning meeting, in accordance with 34 CFR §§303.209 and .344(h), and COMAR 13A.13.01.09.
2. The BCPS did not ensure that the child was evaluated and identified as a child with a disability until August 2013, in accordance with 34 CFR §§300.111.

XXX

Mr. Charles Baugh

Dr. Kim Hoffmann

December 20, 2013

Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 22, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mr. Charles Baugh, Director of Early Intervention Services, Baltimore City Infants and Toddlers Program (BCITP).
3. On October 28, 2013, Ms. Anita Mandis, Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with Mr. Baugh regarding the allegation related to transition planning.
4. On November 14, 2013, Ms. Hartman conducted a telephone interview with the complainant regarding the allegations being investigated.
5. On November 17 and 18, 2013, and December 10, 2013, the MSDE received additional information and documentation from the complainant.
6. On November 18, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
7. On November 21, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the BCITP and the BCPS of the allegations and requested that their offices review the alleged violations.
8. On December 4, 2013, Ms. Hartman conducted a telephone interview with Mr. Baugh regarding the allegation related to transition planning.
9. On December 5, 2013, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) to review the child's early intervention and educational records, and interviewed the following BCPS staff:
 - a. Ms. Roberta Courter, Educational Associate, Office of Early Learning, BCPS;
 - b. Mr. XXXXXXXXXXX, Principal, XXXXXXXXXXX;
 - c. Ms. XXXXXXXXXXX, IEP Chairperson, XXXXXXXXXXX;
 - d. Ms. XXXXXXXXXXX, Early Childhood Educator/Special Educator, XXXXXXXXXXX;
 - e. Ms. XXXXXXX, Special Educator, XXXXXXX;
 - f. Ms. XXXXXXXXXXX, Special Educator, XXXXXXXXXXX;
 - g. Ms. XXXXXXX, Speech Pathologist, XXXXXXXXXXX; and
 - h. Mr. XXXXXXXXXXX, School Psychologist, XXXXXXXXXXX.

XXX

Mr. Charles Baugh
Dr. Kim Hoffmann
December 20, 2013
Page 3

Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

10. On December 5, 2013, the MSDE requested documents from the BCITP, via electronic mail (email).
11. On December 6 and 9, 2013, the BCPS provided the MSDE with documentation to consider, via email.
12. On December 9, 2013, the BCITP provided the MSDE with documentation to consider, via email.
13. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on October 22, 2013;
 - b. *Individualized Family Services Plan (IFSP)*, dated August 16, 2012;
 - c. Report of the Speech/Language Assessment conducted by the BCITP, dated August 16, 2012;
 - d. *IFSP Add/Change Form*, dated October 29, 2012;
 - e. Email correspondence between the complainant and the BCITP staff, dated December 4, 2012;
 - f. *Child Find Referral Notice*, dated December 5, 2012;
 - g. *Notice of Individualized Education Program (IEP) Team Meeting*, dated December 10, 2012, and *Notice of No Assessment Needed and Prior Written Notice Document*, dated December 20, 2012;
 - h. *Notice of IEP Team Meeting*, dated January 14, 2013, and *Child Find Referral, Notice of No Assessment Needed, Prior Written Notice Document, and Receipt of Parental Rights Document*, dated February 1, 2013;
 - i. Correspondence from the complainant to the BCPS staff, dated May 1, 2013;
 - j. *Child Find Referral Notice*, dated May 3, 2013;
 - k. *Notice of IEP Team Meeting*, dated May 6, 2013, *Prior Written Notice Document*, dated June 7, 2013, and *Consent for Assessments*, dated June 7, 2013;
 - l. Letters from the child's private developmental-behavioral pediatrician addressed to "Whom It May Concern," dated April 5, 2013 and May 9, 2013;
 - m. *Consultation Report* from the Baltimore City Child Care Resource Center, dated May 16, 2013;
 - n. Report of the independently obtained *Verbal Behavior Milestones Assessment and Placement Program Assessment* conducted at Trellis Services, Inc., dated June 27, 2013;
 - o. Report of the independently obtained *Occupational Therapy Assessment* conducted at the XXXXXXXXXXXXXXXXXXXXXXXX, dated April 10, 2013;
 - p. Report of the independently obtained *Speech/Language Assessment* conducted at The Vines Early Intervention Services, dated April 29, 2013;

XXX

Mr. Charles Baugh

Dr. Kim Hoffmann

December 20, 2013

Page 4

- q. *IEP*, dated July 26, 2013;
- r. Report of the *Occupational Therapy Assessment* conducted by the BCPS, dated July 5, 2013;
- s. Report of the *Educational Assessment* conducted by the BCPS, dated July 16, 2013;
- t. Report of the *Psychological Assessment* conducted by the BCPS, dated July 18, 2013;
- u. *Evaluation Report and Determination of Initial Eligibility*, dated July 25, 2013;
- v. The BCPS' booklet entitled, *Early Learning Programs for Young Children with Special Needs*;
- w. The BCPS' *Child Find Brochure*;
- x. Email correspondence between the complainant and the BCPS staff, dated April 3, 2013;
- y. Email correspondence from the BCPS to the MSDE, dated December 13, 2013; and
- z. The BCITP's *Provider's Guide*.

BACKGROUND:

The child is three (3) years old and is identified as a child with a Developmental Delay under Part B of the IDEA. Since the start of the 2013-2014 school year, he has been attending the BCPS' *Discover With Me*¹ preschool program for three (3) year olds at XXXXXXXXXXXX XXXXXXXXXXXX, where he receives special education and related services through an IEP.

From August 16, 2012 to October 29, 2012, the child and his family received early intervention services through an IFSP. At that time, the child participated in a daycare program where he was placed by the complainant.

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-v, and interviews with the BCITP staff, the BCPS staff, and the complainant).

ALLEGATION #1: TRANSITION PLANNING (BCITP)

Findings of Facts:

1. The child was referred to the BCITP by the complainant on June 27, 2012, when he was thirty-two (32) months old due to her concerns about his "poor interaction with peers and some repetitive behaviors" (Doc. b).
2. On August 16, 2012, an IFSP team meeting was convened. At this meeting, the IFSP team considered information provided by the complainant, as well as the reports of a

¹ The BCPS' *Discover With Me* preschool program is a small, structured early learning program for children with and without IEPs designed to assist them in achieving developmental milestones, with an emphasis on skills related to order, concentration, coordination and independence (Doc. v)

XXX

Mr. Charles Baugh

Dr. Kim Hoffmann

December 20, 2013

Page 5

Speech/Language Assessment and a Batelle Developmental Inventory conducted by the BCITP staff on the same date. These assessments indicated that the student was experiencing a delay in the development of his social/emotional skills, but was otherwise functioning “at or above” the expected levels for his age. The IFSP team decided that the child met the criteria for identification as a toddler with a Developmental Delay under Part C of the IDEA based on his delay in social/emotional skills (Docs. b and c).

3. The BCITP has established procedures for ensuring that children receiving early intervention services who may require special education and related services at age three (3) are transitioned to the BCPS for an evaluation, with the agreement of the parents, consistent with the IDEA and the Code of Maryland Regulations (COMAR). These procedures identify the BCITP and BCPS staff positions which are responsible for each step of the transition process, and include a procedure for the monthly monitoring of the transition status of children transitioning to Part B of the IDEA (Doc. z).
4. There is documentation that, at the August 16, 2012 IFSP team meeting, the IFSP team considered the steps necessary to transition the child from the Infants and Toddlers Program since he would be turning three (3) years old within the next three (3) months. The IFSP team documented that the complainant did not wish for an IFSP team meeting to be conducted to determine the steps to transition the child to Part B of the IDEA, but wanted the child to remain in his current daycare program and to explore additional programs to promote social interaction. An IFSP was developed that included an outcome for the child to transition to a community-based program appropriate for three (3) year olds, and it required the provision of family training for forty-five (45) minutes monthly to assist in the achievement of that outcome (Doc. b).
5. On October 29, 2012, the IFSP services were discontinued because the child turned three (3) years old (Docs. b, d, and e, and interviews with the BCITP staff and the complainant).

Discussion/Conclusions:

Early intervention services are provided to children with disabilities, from birth through the age of two (2) years old, through the Infants and Toddlers Program under Part C of the IDEA. Special education services are provided to children with disabilities who are aged three (3) through the end of the school year in which they turn twenty-one (21) years old under Part B of the IDEA and related State requirements² (34 CFR §300.101, 34 CFR §303.21, COMAR 13A.05.01.01 and .02, and COMAR 13A.13.01.).

In order to ensure a smooth transition from Part C early intervention services to Part B special education services or other community-based services, the Infants and Toddlers Program is

² In Maryland, if a child who has been receiving services through an IFSP is found eligible for special education services under Part B of the IDEA prior to his or her third (3rd) birthday, the child’s parent can opt for the manner in which services will be provided. They may opt for the child to continue to receive services through an extended IFSP that has an educational component until the beginning of the school year following his or her fourth (4th) birthday, or for the child to receive preschool special education services through an IEP (COMAR 13A.13.01.01, .02, and .09).

XXX

Mr. Charles Baugh

Dr. Kim Hoffmann

December 20, 2013

Page 6

required to conduct a transition planning meeting, with the approval of the parents, for all children receiving services under an IFSP. This meeting must be conducted no later than ninety (90) days prior to the child's third (3rd) birthday, unless the referral for early intervention services was made after the child reached the age of thirty-three (33) months. If the referral was made after the child turned thirty-three (33) months old, the transition planning meeting must be held as soon as possible (COMAR 13A.13.01.09).

If, at the Part C to Part B transition planning meeting, it is determined that the child may be eligible for preschool special education services, the local lead agency must, with the approval of the parents, convene an IFSP team meeting with a representative of the local school system to identify the steps necessary to arrange for the smooth transition of the child from Part C to Part B of the IDEA² (COMAR 13A.13.01.09).

In this case, the complainant alleges that the BCITP did not follow proper procedures to assist her with obtaining special education services for the child under Part B of the IDEA, prior to discontinuing early intervention services under Part C of the IDEA (Doc. a and interview with the complainant).

Based on the Finding of Fact #3, the MSDE finds that the BCITP has procedures in place to ensure the appropriate transition of children from services under Part C of the IDEA. Based on the Findings of Facts #1 - #5, the MSDE finds that, following that procedure, the IFSP team considered the student's transition from Part C, in a timely manner, when developing the initial IFSP because the child had turned thirty-three (33) months old prior to the complainant's referral for an evaluation under Part C of the IDEA.

Based on the same Findings of Facts, the MSDE finds that there is documentation that, at that time, the complainant did not want the child to transition to Part B services, and, as a result, the BCITP did not have her required approval to convene an IFSP team meeting with a representative of the local school system in order to facilitate the child's transition to Part B prior to his third (3rd) birthday. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #2: CHILD FIND PROCEDURES (BCPS)

Findings of Facts:

6. On December 5, 2012, the complainant made a referral to the BCPS for a Part B evaluation due to her concerns related to the development of the child's social/emotional skills. The documentation does not reflect that the complainant informed the BCPS staff at that time that the child had previously received services from the BCITP (Doc. f).
7. On December 20, 2012, the IEP team convened and considered the complainant's concerns, as well as information from her that the child had previously received early intervention services to address a delay in the development of his social/emotional skills. The documentation of the meeting reflects that the team decided that it needed to review the data from the child's early intervention record before it could determine whether the

XXX

Mr. Charles Baugh

Dr. Kim Hoffmann

December 20, 2013

Page 7

child was suspected of requiring special education and related services, and, if so, whether additional data was necessary to conduct an evaluation (Doc. g and interview with the complainant).

8. On February 1, 2013, the IEP team reconvened and considered data from the early intervention record that the student had experienced a delay in the development of his social/emotional skills, but was functioning at or above expected age levels in other developmental areas. The team also considered information from the complainant that she had observed “considerable” improvement in the child’s behavior. As the result of this review, the IEP team determined that the child was not suspected of having a disability or a developmental delay under Part B of the IDEA (Doc. h).
9. On May 1, 2013, the complainant made another referral to the BCPS for an evaluation under Part B of the IDEA (Docs. i and j).
10. On June 7, 2013, the IEP team convened and considered information provided by the complainant that the child’s behavior had regressed since the February 1, 2013 IEP team meeting, and that she had obtained independent assessments indicating that the child displays “characteristics consistent with an Autism Spectrum Disorder,” which recommended that he be evaluated to determine if he has a disability under Part B of the IDEA. Based on the data, the IEP team determined that a disability was suspected, and recommended that assessments be conducted in the areas of academic performance, social/emotional development, and fine motor skills, and that a classroom observation be performed (Docs. k-p, and interviews with the complainant).
11. On July 26, 2013, the IEP team convened and reviewed the reports of the completed assessments. The data indicates that the child was functioning “at least” twenty-five percent (25%) below that of his peers with regard to his communication and social skills. Based on the data, the IEP team found that the child has a developmental delay for which he requires special education services, and an IEP was developed (Docs. q-u, and interviews with the BCPS staff and the complainant).

Discussion/Conclusions:

Each public agency is required to identify, locate, and evaluate all children residing in the jurisdiction who have a disability and who are in need of special education and related services (34 CFR §300.111).

A child with a disability under Part B is defined as a child who has been evaluated as having at least one of the identified IDEA disabilities, and who requires special education services as a result of the disability. In Maryland, a child between the ages of three (3) through seven (7) who has a developmental delay may also receive special education services through an IEP. A child with a developmental delay is one who is evaluated as having a twenty-five percent (25%) or greater delay in a list of areas, including social or emotional development; atypical development or behavior; or a physical condition as defined in the regulations (34 CFR §300.8 and COMAR 13A.05.01.03).

XXX

Mr. Charles Baugh
Dr. Kim Hoffmann
December 20, 2013
Page 8

Upon receipt of a written referral for an IDEA evaluation, the public agency must determine whether it suspects the child of having a disability, and if so, promptly request parental consent to assess the child in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05). The public agency must also ensure that assessment procedures are administered, as needed, and that the IEP team completes the evaluation within sixty (60) days of parental consent for assessments and ninety (90) days of the receipt of the written referral (COMAR 13A.05.01.06).

In this case, the complainant alleges that the BCPS did not identify the child as a student with a disability under Part B of the IDEA in a timely manner because he was not identified following the December 5, 2012 referral (Doc. a and interview with the complainant).

Response to the December 5, 2012 Referral for Evaluation

Based on the Findings of Facts #6 and #7, the MSDE finds that the BCPS convened the IEP team in response to the complainant's referral. Based on the Findings of Facts #6 - #8, the MSDE further finds that the IEP team reviewed the existing data and determined that the child was not suspected of having a disability, consistent with the data and within the required timelines. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

Response to the May 1, 2013 Referral for Evaluation

Based on the Findings of Facts #9 and #10, the MSDE finds that the BCPS convened the IEP team again in response to the complainant's second referral. Based on the Finding of Fact #10, the MSDE finds that the IEP team reviewed existing data, including information that the student's behavior had regressed since his performance and functioning were previously reviewed by the IEP team. Based on the Findings of Facts #9 - #11, the MSDE further finds that the IEP team determined that, based on this information, the child has a disability consistent with the data and within the required timelines. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

Please be advised that the complainant, the BCITP, and the BCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant, the BCITP, and the BCPS maintain the right to request

XXX

Mr. Charles Baugh

Dr. Kim Hoffmann

December 20, 2013

Page 9

mediation, or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of early intervention services or a Free Appropriate Public Education (FAPE) for the child, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/

Early Intervention Services

MEF/ch

cc: Tisha S. Edwards
Charlene Iannone-Campbell
Charles Brooks
Nancy Ruley
Dori Wilson
Anita Mandis
Christine Hartman
Brian Morrison
Nancy Vorobey